



Islami Jamhori Itehad and the Politics of *Shariah* Bill

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Abstract:

The use of religion, religious notions or religious differences and discrimination in politics is a global phenomenon also embedded in the roots of Pakistan. It not only remained a major contributing factor behind the creation of Pakistan but in different phases of its history, both civil and military political forces have used it for their political gains. In 1988, an alliance Islami Jamhoori Itehad (IJI) aimed at safeguarding the ideology of Pakistan did the same. The alliance succeeded in denying the political majority to Pakistan People's Party (PPP) in the Punjab by portraying it as anti-Islam but failed to curtail PPP from emerging as a major party to form government in the centre after the 1988 elections. In the 1990 elections, the IJI won a clear majority and formed the government in the centre. But resorting to the introduction of Shariah Bill in the parliament exposed the alliance to the substantial challenges associated with the imposition of Shariah in the complicated contemporary socio-economic and political realities. The coalition proved both unprepared and unwilling in the practical implementation of Shariah. Hence the use of the Shariah Bill and Shariah Act fired back on IJI by harming its public image and unity.

Key Words: Pakistan, religion and politics, Shariah, legislation, PPP, IJI, alliance

INTRODUCTION

The use of religion in Pakistani politics is as old as its history when All India Muslim League (AIML) used Islam as a base of Muslim identity in Indian Politics. The creation of Pakistan on religious differences then engulfed the entire fabric of Pakistani politics and society. Since then different political forces have used religion either to Islamise the Pakistani political system or to gain political interests.

Religion has remained the base of either coming into power or curtailing others to gain power or even prolonging one's rule in Pakistan. It is hard to trace political developments of any kind having it dissociation from religion in Pakistan. State institutions, political parties, and individuals all use religion for their gains one way or the other. Policymaking, legislation, and day-to-day business of the state is either praised or criticized on religious notions. Not going into the details of Islamisation in Pakistan since 1947 as it is researched in detail by many scholars both in academic and non-academic ways. The study focuses on the post-Zia Martial Law regime that initiated a detailed and comprehensive yet unsuccessful drive of Islamisation in Pakistan.

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ISLAMI JAMHORI ITEHAD (IJI) AND POLITICS OF ISLAMISATION OF LAWS

Zia ul Haq's death in August 1988 showed to have effectively eliminated the decade-long significant political support for imposition of *Shariah* in the country. However, Zia's Islamisation policies have deeply divided all segments of Pakistani society. The struggle and antagonism of both supporters and critics penetrated in the political parties and civil and military bureaucracy of the country, each trying to out-manoeuvre the other. Soon after Zia's death, the care-taker pro-establishment President Ghulam Ishaq Khan's promulgation of a "revised" *Shariah* ordinance on 15th October, 1988 (Khan H. , 2010) was a clear indication of the continuation of the process of Islamisation in the country.

Formation of Islami Jamhuri Itehad (IJI)

Efforts to strike an alliance of the political parties having pro-Islamic tendencies were initiated on the behest of the military to counter any such possibility of discontinuity in the already pursued policies of the state apparatus. For this purpose, an alliance with the name of Islami Jamhuri Itehad (IJI) was established in 1988 before the general elections. The alliance was aimed to continue the policies of the previous government, including Islamisation. From its onset, the IJI started using religion as a means of political gains and political antagonism. Its arch-rival Pakistan People's Party (PPP) and her allies were portrayed as anti-Islam and anti-Pakistan. The entire effort was to curtail the chances of PPP coming into power. On the other hand, the PPP severely criticized IJI and its component parties to be anti-democracy, stooges of the forces of exploitation; who are against the rights of the general masses.

The 1988 General Election results showed a clear political divide of pro-Zia and pro-Bhutto political forces in the country. Both the forces had gains and losses in the elections as against their expectations. PPP emerged as the single largest party in the National Assembly but was short of a clear majority to form government at the centre. However, it succeeded in Sindh with a clear majority and won sizeable number of seats in North West Frontier Province (NWFP), now renamed as Khyber Pakhtunkhwa (KP) and Punjab assemblies. It managed to form the government with allies in NWFP but was not able to control Punjab. Whereas, the IJI succeeded in Punjab and emerged as the second largest group in the National Assembly, thus denying Punjab's politically important province to PPP. Losing Punjab is almost losing half of the country as Punjab's numerical strength can affect the governance and any future political success or failure. IJI had an additional edge of having majority in the Senate and support of the President and military establishment.

The PPP succeeded in forming the government at the centre in 1988 and IJI had to sit on the opposition benches. Both the PPP and IJI tried to counter each other through different tactics. Prime Minister Benazir Bhutto made efforts to use the centre's powers to create difficulties for Punjab and Baluchistan's provincial governments through federal ministries. The IJI and allies challenged the authority of PPP through different constitutional manoeuvres in National Assembly stressing for Islamisation and Islamic identity of Pakistan by dubbing PPP as anti-Islam. The PPP had a contrasting approach towards Islamisation. When it came into power, PPP responded indifferently. When in December 1988, the *Shariah* ordinance was presented to the newly constituted National Assembly, Benazir Bhutto took no action on the bill, allowing it to expire and lose its legal effect on

15th February, 1989. Benazir's government showed no inclination to revive the adoption of a *Shariah* bill despite criticism and demands from the IJI (Kenedy, 1993).

IJI's Shariah Bill in Senate

The IJI resorting to different tactics of giving tough time to PPP initially resisted her authority in the province of Punjab. The IJI used a no-confidence move against Benazir in the National Assembly, then came with its own interpretation of the constitutional articles and clauses amended through the 8th constitutional amendment bearing effects on the authority and the selection method of the Prime Minister.

In May 1990, IJI, which had a majority in the Senate (upper House of Pakistani legislature), initiated a debate on Shariah's imposition in the country to put PPP government under pressure of public condemnation and wrath of the religious masses in the country. Accordingly, the Senate passed the "Shariat Bill (Senate version), 1990" which had a close resemblance to Zia's ordinance "The Enforcement of *Shariah* Ordinance. 1990" (Hussain, 2008).

Passage of the Senate bill intended to force the consideration of the bill in the National Assembly. IJI hoped that the prospective debate on such a bill in the NA would prove very embarrassing to Benazir's shaky coalition government and her public commitment to oppose the Islamisation of laws initiated by Gen.Zia (Hussain, 2015). The IJI stance was to trap Benazir as it would be easy to characterize Benazir's anticipated opposition to the bill as further evidence of her being "anti-Islamic." Resultantly, it would serve to weaken her government and enhance IJI's popularity in religious minded masses for any forthcoming elections (The Nation, 1990).

President Ghulam Ishaq, who hailed the adoption of the bill by the Senate, had urged the National Assembly to follow suit. The PPP government made it clear that it did not accept the bill in its present shape, the implication of which was quite serious to them (The Muslim, 1990). The PPP delayed any debate to take place in the National assembly on the Shariah Bill. Benazir Bhutto, in the meanwhile, had developed serious differences with the President on the exercise of the constitutional powers of Prime Minister and President, including appointment of judges and services chiefs. Apart from it, the PPP also lost the confidence of her allies like Awami National Party (ANP) and Muhajir Qaumi Movement (MQM) one after the other. The law and order situation in Karachi and other parts of the country worsened, and the Sindh police action in Hyderabad further deteriorated the situation. On 6th August, 1990, the evening of the scheduled debate on the *Shariah* bill in the NA (The Nation, 1990), the PPP government was dismissed and the assemblies were dissolved by President Ghulam Ishaq Khan.

IJI Government and Shariah

The country went to polls in 1990, where IJI emphasized its religious connotations in politics and continued criticism on its political rivals belonging to PPP or her allies. The criticism crossed the limits of moral and ethical values by publically maligning the personal and family lives. Bits and pieces of anything which could be interpreted as un-Islamic were gathered to fabricate stories and inflame public sentiments. The extensive use of religion and religious arguments created an environment of hatred against the political rivals. It became a religious obligation for ideological zealots to win the elections at any cost.

The IJI won the 1990 General Elections. After assuming power, its leader Nawaz Sharif reiterated his commitment to *Shariah*. He was on record, in the words of Kenedy "as being both ideologically and emotionally committed to the passage of a *Shariah* bill" (Kenedy, 1993). The main thrust of the formation of IJI was to enforce *Shariah* in the country and implement it as their policy agenda (Malik, 2014). For this purpose, they had already passed the *Shariah* bill from the Senate during Benazir government but could not persuade the National Assembly to adopt it. Getting a "*Shariah* Law" passed through the Parliament would please the religious components of the alliance and also keep an electoral promise (Hussain, 2008).

The religious parties within the alliance had adopted a three-track strategy to pass the Shariah Bill. The first strategy entailed public education and opinion to gain popular acceptance of the advisability and viability of an interest-free economy. The second strategy sought to change Pakistan's constitutional structure, through the passage of a "*Shariah* bill" which would make *Shariah* superordinate to Pakistan's constitution. The third strategy, a refinement of the second, had sought to encourage Pakistan superior courts, particularly the Federal *Shariah* Court (FSC) and Supreme Court of Pakistan (SCP), to take an approach in defining their respective jurisdictions to entertain constitutional questions relevant to matters "repugnant to Islam" (Dawn, 1991).

The IJI hoped that the Shariah law when get implemented, would create a panel of Islamic Judges which could veto any legislation that they deemed contrary to the *Shariah* hence will help achieve the goal of Islamisation of the country. But another apprehension was that it could displease Sharif's other supporters and distract attention from eliminating the illiteracy and poverty on which the future popularity of his government depended (Dawn, 1990).

The PPP had read between the lines of the *Shariah* bill. Benazir Bhutto said that *Shariah* bill would be acceptable to the Pakistan Democratic Alliance (PDA - an alliance formed by PPP to counter IJI in 1990s elections) but the proposed bill was a conspiracy to divide the country on sectarian lines. She reminded the people of Zia's rule and said, "this card was used by previous dictators to rule the people" (Dawn, 1991). The PPP thus kept itself at a distance from the Shariah Bill tactfully by relating it to the socio-economic and political issues avoiding any reference being made to its relevance with the beliefs of the masses. Qazi Hussain Ahmed, leader of Jamaat-e-Islami (JI), a component of IJI, had termed the criticism that *Shariah* bill would divide the nation into sects as "nonsense" (Dawn, 1991).

A meeting of the IJI Parliamentary Party and its allies in the National Assembly was held to devise a strategy about Shariah Bill under the Chairmanship of Nawaz Sharif. This meeting brought to surface sharp differences on the proposed *Shariah* bill, which ultimately led to a walkout by the Ulema belonging to religious parties in IJI. The ruling party faced severe criticism, particularly from the Ulema belonging to the Jamiat ul Ulema-e-Islam-Darkhawasti Group (JUI-D), Jamiat ul Ulema-e-Pakistan-Niazi Group (JUP-N) and some members of the ANP, and MQM. Some MNA's of IJI were not happy on some provisions of the bill.

Differences also emerged during the IJI Parliamentary party meeting in the Senate. An IJI member from Faisalabad, Rana Nazir Ahmed, accused Ulema of pressing for the *Shariah* bill for their vested interests. According to Rana Nazir "they were insisting on the passage of the bill immediately

because they wanted to become Muftis and judges of the Superior courts (Malik, 2014). Asghar Khan, a leader of PDA, criticized the bill as "transfer of power to the Mullahs" (Khan 2008).

Prime Minister Nawaz Sharif said adoption of the *Shariah* bill was a test case for his government and he would resolve this big issue while having support from the opponents both sitting in and outside the parliament. He declared in the Senate that his government "was not of personalities but of institutions" (Khan., 2001). He intended to convince parliament not to adopt any anti-government policies which could harm the IJI's unity (The News, 1991).

Shariah Bill and Senate Elections

Amid heated debate, the IJI leaders decided to postpone the presentation of the *Shariah* bill till the Senate elections, which were scheduled on 14th March 1991. Elections were to be held on 46 seats of the Senate, whose incumbent members, were retiring on 20th March, 1991, after completing their term of office. In the Senate elections, IJI bagged a total of 24 seats while its allies won 10 seats. The PDA secured only five seats. Of the total 46 seats under contest, four belonged to FATA, and three in Sindh returned to the Senate unopposed. (Dawn, 1991)

The component religious parties of IJI further strengthened their demand by getting united for the cause in a new grouping of eight religious parties with the name of *Muttahida Deeni Mahaz* (MDM) led by Maulana Sami ul Haq. The newly created MDM further pressed the government for quick implementation of the *Shariah* bill. The component parties of MDM criticized the IJI government for using delaying tactics in presenting the bill to the parliament. They warned the government to not accept any such legislation if this did not ensure the supremacy of *Shari'ah* (The Economist, 1991).

Shariah Bill of the IJI governemnt

Bowing to pressure from the Ulema, Nawaz Sharif had introduced a *Shariah* bill under which the Islamic religious code would be given legal status (Mehdi, 2015). A Shari'ah Bill was introduced in the parliament amidst severe criticism from parliamentarians belonging to opposition parties. Nawaz Sharif responded to the critics with a "historic" address to the parliament announcing new Islamic laws to govern the nation soon. The proposed *Shariah* bill proclaimed the Quran and the Sunnah as the supreme law of the land. However, many of the draft proposals merely emphasized existing features of the constitution (The News, 1991).

The new bill was different from the lapsed *Shariah* bill that the Senate passed during Benazir's period. This bill spelled it out in the following words, "In this act, unless the context otherwise requires, *Shariah* means the injunctions of Islam as laid down in the Holy Quran and Sunnah" (Government of Pakistan, 1991). Keeping sectarian harmony in view, the bill explained, "...interpreting the *Shariah* with respect to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect." The *Shariah* bill sought Islamic reform in specific areas of education, economy, police, and the judicial system, plus creating a *Baitul Mal* as an Islamic version of a social security arrangement (Ali, 1991.)

Ostensibly religious in its aims, the Shariah Bill was so general that it seemed unlikely to please anyone. By introducing the bill in the National Assembly, the Prime Minister had hoped to put off indefinitely a widely anticipated confrontation between secular and Islamic factions in Pakistani society. Upon criticism from the Islamists within IJI, declaring the bill as inadequate, the select

committee of Senate, MNAs, along with Ulema and technocrats agreed on another version of *Shariah* legislation to overcome the flaws identified in the first draft on 11th May 1991 (The News, 1991).

The PDA, JUI-F (a faction led by Fazalur Rehman), and ANP had rejected the *Shariah* bill in dissent notes by strongly attacking various clauses of the document. The dissent notes annexed with the report of the select committee, presented in the House, said that the more incurable defect in the bill was that it claimed to be a bill for enforcement of *Shariah* but it was entirely against the *Shariah* itself.

A controversial new clause had been added which reads: "the state shall make effective arrangements "to avail the services of persons duly qualified in *Shariah*, Islamic Jurisprudence and *Ifta* in the judicial system" (Pakistan, 1991). Such a provision existed in the previous bill that Senate had passed and the committee asserted to insert that in the existing bill and the government did so. Another significant addition had been made to the "Explanation" of the definition of *Shariah* as demanded by the committee. According to it, "While interpreting and explaining the *Shariah*, the recognized principles of interpretation and explanation of the Holy Qur'an and Sunnah shall be followed, and the expositions and opinions of recognized jurists of Islam belonging to prevalent Islamic schools of jurisprudence may be taken into consideration" (Pakistan, 1991).

Interestingly in the financial and economic aspects, no time had been specified to do away with *Riba* (interest). However, the words "shortest possible time" had been replaced with "a period of three years" fixed for a commission to come out with an alternative economic and educational system." In financial matters, a demand note related to binding the President and the Prime Minister not to issue an order that clash with the *Shariah* was also included. Thus, on the unanimous recommendation of a joint meeting of the IJI parliamentary party and its allies, the government introduced essential amendments in the *Shariah* bill.

The NA passed the crucial *Shariah* bill with an overwhelming voice vote on May 16, 1991 (Pakistan Times, 1991). In a speech immediately after its passage, Sharif described it as "historic" and repeatedly sought opposition's "assistance and guidance" to implement his package of laws and reforms (Dawn, 1991). The PDA rejected the bill; calling it, "divisive, unconstitutional, colossal, grand deception and political stunt" that has abridged the rights of women" (Kenedy, 1993).

The *Shariah* bill, after its passage from the NA was moved in the Senate session of 22nd May, 1991. The Senate, on May 28, passed the *Shariah* bill into law after a long debate. Out of 47 senators present in a House of 87, 40 members voted for the Bill. Three opposition Senators voted against it while four abstained (Dawn, 1991). Despite considerable self-serving magnification by the government officials, the "Enforcement of *Shariah* Act, 1991" was likely to have only a marginal impact upon the pace of Islamization in Pakistan. First as an "act" of the *Majlis-i-Shura* it did not amend the constitutional provisions that limit the scope of the superior court's jurisdiction. Second, the 1991 Act did not address the jurisdictional issue between the High Courts and FSC, the main point of Zia's 1988 *Shariah* bill (Hussain, 2008).

The Effects of the Shariah Bill

The Shariah Bill soon started showing its effects on the governmental missionary and state institutions. Along with other complicated issues, an unexpected confluence of factors propelled the issue of interest (*Riba*) to centre stage in Pakistan judicial system.

Reasons for this include firstly, Benazir's government "neglected" to extend the date of barring FSC consideration of "fiscal laws," found in Article 203-B of the Constitution of the Islamic Republic of Pakistan, beyond June 25, 1990. Secondly, Justice Tanzil-ur-Rehman's appointment as Chief Justice of the FSC on November 15, 1990, prompted the disposition of cases that brought challenges for the IJI government (Kenedy, 1993). Justice Tanzil announced, through a decision rendered on January 13, 1991, that the FSC was now competent to entertain *Shariah* petitions challenging fiscal legislation. The Court was swamped with such petitions which found a sympathetic hearing in Tanzil-ur-Rehman and among a majority of other justices of the FSC (Hussain., 2008). In its principal judgment on a fiscal issue, delivered on November 21, 1991, it declared 22 fiscal laws as repugnant to Islamic injunctions and ordered their revision by July 1, 1992 (Kenedy, 1993).

The IJI government had been shocked by the implications of the FSC's decision. IJI's first, major domestic policy initiative had been the liberalization of Pakistan's economy, which got threatened by this decision. A state of confusion had taken place in the financial circles within the country and in the international community, which ultimately shook the economic system of the country to its very base. Therefore, the government was compelled to undertake an extensive exercise to clear the mist surrounding the issue of *Riba* (Mehmood, 2002). While the Ministry of Law and Justice explored various options to resolve the issue to regain the confidence of international donor agencies and foreign investors.

Prime Minister Nawaz Sharif, who personally shepherded the *Shariah* Bill through the *Majlis-i-Shura* (consultative body), has now put the government in an odd position. If the government appeals against the FSC's decision, it could open itself to the charge that it was hypocritically relevant to the Islamisation process. If it did not appeal the decision, the IJI's economic policies were likely to fail. The government faced such a difficult decision, and chose the path of least resistance. It encouraged a semi-government entity, the Agricultural Development Bank of Pakistan (ADBP), to file an appeal before the *Shariah* Appellate Bench of the SCP challenging the Mahmood-ur-Rehman Faisal vs. Secretary, Ministry of Law and Parliamentary Affairs (Court, 1991). This endeavour helped the government in buying time for imposition of the decision thus came out of immediate economic crisis of designing interest-free economy. The issue of *Riba* still remains unsettled.

The Enforcement of *Shariah* Act, 1991, provoked more questions than it answered. Despite a near-consensus within the IJI government opposed to the FSC's decision, the government was powerless to act, a captive of an ideological commitment to Islam and a lack of political valour in leadership to handle the situation (Ali, 1991).

CONCLUSION

The use of religion, which IJI emphasized initially to put PPP in odd position by making an effort to portray her as anti-Shariah and anti-Islam, initially paid off for IJI. It along with many other factors

helped IJI to gain majority in the parliament with the support of small but electorally important religious parties in the sense that their vote banks happen to be the decisive vote in a number of constituencies. But once the electoral battles were over, the process of making government started initiating problems of fulfilling the desires and demands of these disgruntled groups.

Furthermore, the pressure from those parties whose support was now much needed to keep intact the coalition government, put the Prime Minister in odds as he had to succumb to their pressure. The cause of Islamisation compelled the IJI leadership to go for the Shariah legislation the implementation of which was little if no preparations made. Once the Shariah Bill was passed, it started multiplying the problems present in the overall system of the state in general and the system of governance in particular. The politics of Shariah made the situation embarrassing for IJI and its leader Mian Nawaz Sharif as he was not in a position to implement the Shariah based system in its true spirit. Resultantly, some of his allies started losing confidence in his government and personality. In a bid to strengthen his government, he had to sacrifice the parties which had less number of seats in the parliament. The process of including one-time arch political rivals like ANP in the government and giving more share to MQM caused cracks in the ranks of IJI. These cracks, soon led to the unofficial and abrupt end of the alliance without achieving its main objective, i.e., imposition of Shariah laws in the country.

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